

## GOVERNMENT OF PUDUCHERRY

## LABOUR DEPARTMENT

(G.O. Rt. No. 38/AIL/Lab./J/2012, dated 12th March 2012)

## NOTIFICATION

Whereas, the Award in I.D.No. 34/2010, dated 8-12-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Mahabir Packaging Limited and its workmen Thiru G. Janagiraman and P. Rani over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

**N. APPA RAO,**

Under Secretary to Government (Labour).

## BEFORE THE LABOUR COURT AT PUDUCHERRY

*Present :* Thiru T. MOHANDASS, M.A., M.L.,  
II Additional District Judge,  
Presiding Officer, Labour Court,  
Puducherry.

*Thursday, the 8th day of December 2011***I.D. No. 34/2010**

1. G. Janagiraman

2. P. Rani

.. Petitioners

*Versus*

The Managing Director,  
Mahabir Packaging Limited,  
Karasur Village, Sedarapet,  
Puducherry.

.. Respondent

This petition coming before me for final hearing on 2-12-2011 in the presence of Thiru T. Gunasegaran, Advocate for the petitioner, Tmt. Vrintha Mohan, Advocate for the respondent and upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

## AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No. 198/AIL/Lab./J/2010, dated 7-10-2010 of the Labour Department, Puducherry, to resolve the following dispute between the petitioners and the respondent, *viz.*,

(1) Whether the dispute between the management of M/s. Mahabir Packaging Limited, Puducherry and Thiru G. Janagiraman and P. Rani over non-employment is justified or not?

(2) If justified, what relief, the petitioners are entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement has stated as follows:—

On 1-3-1999 the first petitioner had joined in the respondent company as Machine Operator and had been continuously working till 8-4-2006. He was providing with a low salary of ₹ 2,050 per month and hence he demanded for reasonable salary, but the respondent management refused for the same and dismissed him from service on 8-4-2006. Then the first petitioner has been working in another company by Sri Mugambiga Breeding, Thuthipet village and was getting more income. At that time, the respondent management had approached him for reinstatement and assured more salary and continuity of service and hence he accepted the said offer. Accordingly, the first petitioner again joined in the respondent management as Machine Operator and they have given a monthly salary of ₹ 3,700 to him. The respondent management failed to give reasonable salary to the first petitioner as assured by them. The first petitioner demanded more salary of ₹ 8,000 per month. The respondent management had appointed 9 new employees from Orissa and Nepal in the place of petitioners and they were provided with training and then dismissed the first petitioner from service on 11-10-2009.

The second petitioner joined in the respondent company on 10-5-2008 as Machine Operator Helper and her monthly salary was ₹ 2,200. She was provided with the facility of E.S.I. and P.F. Since the second petitioner along with the first petitioner demanded for more salary, the respondent management dismissed her from service on 27-10-2009.

Both petitioners have rendered service for more than 240 days. But they have been dismissed from service without conducting any domestic enquiry. The oral dismissal order of non-employment is not valid in the eye of law and is totally unlawful. Hence, this petition for industrial dispute is filed for their reinstatement with back wages.

3. The respondent in his counter statement has stated as follows:—

The first petitioner is running a tailoring unit in his own house besides other employments and has got roaring business and not interested in the employment with this respondent and that any prudent man who had discontinued from a company, which is allegedly giving very low salary would not choose to join the very same company. The first petitioner was humanitarily offered a job with the respondent's sister concern before the Labour Officer (Conciliation) but for reason best known to the first petitioner he had rejected the offer and the conciliation proceedings were dropped mainly because of the non-cooperation and non-interest shown by the first and second petitioners and the failure report by the Labour Officer (Conciliation), dated 13-9-2010 would speak volumes on the *mala fideness* of the petitioners and the *bona fideness* of this respondent.

The second petitioner joined the respondent company on 12-5-2008 as Helper and she had abruptly abandoned the service on 27-10-2009 without availing any leave/intimation or obtaining any permission from the management. The second petitioner is not interested in the employment with the management, which would also be evidenced by the fact that when the Labour Officer directed the management to take back the second petitioner for reinstatement, which was also heeded with no constraint by the management and that the second petitioner reported with the management for duty on 22-2-2010 and was exhibiting lethargy and disinterest and once again abandoned the service with no intimation on 25-2-2010 and thereafter came to the office of this respondent on 9-3-2010 and expressed her willingness not to continue with the employment of this management and received the pay for the period from 22-2-2010 to 25-2-2010 and thereafter on 16-4-2010 the second petitioner had unconditionally offered for a full and final settlement before the Labour Conciliation and expressed firm intention not to continue the employment with this management.

The first petitioner is employed for gain in his residential tailoring unit and the second petitioner is employed for gain with a private concern at Sedarapet and hence they are not entitled for any back wages.

4. On the side of the petitioners, the first petitioner was examined as P.W.1 and the second petitioner was examined as P.W.2 and marked Ex.P1 to Ex.P8. On the side of the respondent, R.W.1 was examined and Ex.R1 was marked.

5. Now the point for determination is:

“Whether the petitioner is entitled for the relief sought for?”

On this point :

6. This industrial dispute is filed by two petitioners and they have stated that they worked in the respondent company as Machine Operator and when they demanded for more salary, they have been terminated from service without any reason.

7. The first petitioner was examined as P.W.1. P.W.1 in his evidence has deposed that he joined in the respondent company on 1-3-1999 as Machine Operator and had been continuously working till 8-4-2006 and he was providing with low salary of ₹ 2,050 and hence he demanded reasonable salary and the respondent company refused for the same and then dismissed him from service on 8-4-2006. P.W.1 further deposed that then he has been working in another company by Sri Mugambiga Breeding, Thuthipet village and was getting more income and at that time, the respondent management had approached him for reinstatement and assured more salary and continuity of service and hence he accepted the said offer and accordingly, he again joined in the respondent management as Machine Operator and they have given a monthly salary of ₹ 3,700 to him, but the respondent management failed to give reasonable salary to him as assured by them and he demanded more salary of ₹ 8,000 per month and the respondent management had appointed 9 new employees from Orissa and Nepal in the place of petitioners and they were provided with training and then dismissed the first petitioner from service on 11-10-2009. P.W.1 has marked Ex.P1 to Ex.P6. Ex.P1 is the copy of the identity card issued by E.S.I. Corporation. A perusal of Ex.P1 reveals that the date of entry of the petitioner is mentioned as 15-12-1999. P.W. 1 has also produced and marked the P.F. slip pertaining to the year 1998-1999 as Ex.P2 and 2004-2005 as Ex.P3. Hence, P.W.1 has proved through Ex.P1 to Ex.P3 that he was working in the respondent company from the year 1999 to 2006. Though the respondent has not admitted that P.W.1 was working from the year 1999, he has not denied the said fact through any rebuttal evidence.

8. The second petitioner was examined as P.W.2. P.W.2 in her evidence has deposed that on 10-5-2009 she had joined in the respondent company as Machine Operator and her monthly salary was ₹ 2,200 and she was provided with the facility of E.S.I. and P.F. and since she has demanded more salary due to price raise, the respondent management has appointed nine new employees from Orissa and Nepal and dismissed her from service on 27-10-2009. According to P.W.2, she was working as Machine Operator Helper for the past two years and six months.

9. Though there is no document filed on the side of the second respondent to prove that she was the employee under the respondent company, the respondent in their counter has admitted that P.W.2 working as an employee in their company from 12-5-2008 to 27-10-2009. Hence, there is no dispute that PW1 was an employee under the respondent company from 1999 to 2006 and P.W.2 was an employee from 12-5-2008 to 27-10-2009.

10. The main contention of P.W.1 and P.W.2 is that since the respondent management has not given the reasonable salary, as assured by them, they demanded more salary, but the respondent management has appointed nine employees from Orissa and Nepal and dismissed from service on 11-10-2009 and 27-10-2009 respectively.

11. On the side of the respondent, the Manager of the respondent company was examined as R.W.1. R.W.1 in her evidence has deposed that the first petitioner is running a tailoring unit in his own house besides other employments and has got roaring business and not interested in the employment with this respondent and that any prudent man who had discontinued from a company, which is allegedly giving very low salary would not choose to join the very same company and the first petitioner was humanitarilly offered a job with the respondent's sister concern before the Labour Officer (Conciliation) but for reason best known to the first petitioner he had rejected the offer and the conciliation proceedings were dropped mainly because of the non-cooperation and non-interest shown by the first and second petitioners and the failure report by the Labour Officer (Conciliation), dated 13-9-2010 would speak volumes on the *mala fideness* of the petitioners and the *bona fideness* of this respondent.

12. R.W.1 further deposed that the second petitioner joined in the respondent company on 12-5-2008 as Helper and she had abruptly abandoned the service on 27-10-2009 without availing any leave/intimation or obtaining any permission from the management. R.W.1 further deposed that the second petitioner was reinstated afresh into the employment as directed by the Labour Officer and the second petitioner reported with the management for duty on 22-2-2010 and was exhibiting lethargy and disinterest and once again abandoned the service with no intimation on 25-2-2010 and thereafter came to the office on 9-3-2010 and expressed her willingness not to continue with the employment of this management and received the pay for the period from 22-2-2010 to 25-2-2010 and thereafter on 16-4-2010 the second petitioner had unconditionally offered for a full and final settlement before the Labour Conciliation and expressed firm intention not to continue the employment with this management and hence the question of reinstatement

would not arise since the first and second petitioners had discontinued out of their own volition and disinterest in employment.

13. In order to prove his said contention, no document was marked on the side of the respondent. According to R.W.1, the petitioners had discontinued out of their own volition and disinterest in employment. When the petitioners have not reported for duty for more than eight days, it is for the respondent to send notice/memo. calling upon them to submit their explanation for unauthorised absence. In this case, there is no such notice or memo. was sent to the petitioners, as admitted by R.W.1 in his cross-examination. The relevant portion of his evidence is as follows:-

“வேலையை விட்டு நின்றுவிட்டதால் மனுதாரர்கள் மீது காரணம் கேட்டு நோட்டீஸ் நாங்கள் அனுப்பவில்லை. வேலைக்கு மனுதாரர்கள் வராததால் அவர்கள் ஒழுங்கு நடவடிக்கை எடுப்பதற்கு நோட்டீஸ் அனுப்பினோமா என்றால் இல்லை.”

Further no domestic enquiry was conducted to prove that the petitioners were abandoned from service and no termination order was issued to them. Even if the petitioners were unauthorised absent, it is for the respondent to initiate disciplinary proceeding against the employee by issuing charge memo. and to conduct the domestic enquiry and after giving fair opportunity to the petitioners and after complying all the legal formalities only, the petitioners can be terminated. In this case, the respondent failed to do so. It is pertinent to refer the following decisions, which is relevant to this case:-

2002(4) L.L.N. 850 (Allahabad):

“Abandonment of service - Even in the case of alleged abandonment, it is necessary for employer to conduct an enquiry, issue a charge sheet and notice to the workman concerned informing him that he is continuously absenting without any sanctioned leave- Admittedly this having not been done in this case the plea of employer about abandonment of service by workman not tenable.”

1991 (1) L.L.N. Page 817:

“Misconduct - *Situs of* - Relevancy of - Workmen dismissed without enquiry for misconduct of assaulting engineer of factory - Incident taking place outside factory premises -Such an incident, held, cannot form basis of charge on ground of misconduct to bring it within scope of relevant standing order - Award of Labour Court reinstating workmen on ground that the involvement of workmen in the incident of assault has not been established cannot be interfered with by High Court -High Court cannot go into question of adequacy of evidence.”

14. Even in a case of assaulting the employee, the domestic enquiry should be conducted as held by the Hon'ble High Court in the second citation mentioned above. In this case, the respondent's allegation against the petitioner is that they had discontinued out of their own volition and disinterest in employment that too, was not properly proved as discussed above. Further it is not the case of the respondent that the petitioners were regular in indulging misconduct with the employees. There is no past history of the workman to show that the petitioners involved in any misconduct or indiscipline by violating the principles of labour enactments. An employee who has completed 240 days service is treated as workmen under 2(s) of Industrial Disputes Act and hence he cannot be denied the employment without any reason. In this case as admitted by the respondent, the petitioners No.1 and 2 were permanent employees, who were working for more than seven years and two years respectively and hence the respondent cannot terminate the petitioners without any domestic enquiry. Hence, I feel that the act of the respondent company was a clear case of violation of labour laws and acted against the spirit of welfare of the workmen of the company and hence it is against the provision of labour enactments and natural justice. Accordingly, this point is answered.

15. The contention of the petitioner is that he was terminated from service without any reason or enquiry and hence the action of the first respondent is illegal, arbitrary and unsustainable in law.

16. There is no record produced on the side of the first respondent or second respondent to prove that the enquiry was conducted before terminating him from service. Further no termination order was issued to the petitioner. In the above circumstances, the termination of the petitioner by the first respondent is illegal. Hence for the reasons stated above, this court has come to the conclusion that the petitioner was an employee under the first respondent and the termination of the petitioner from the service is against the law. Considering the facts and circumstances, the petitioners are not entitled for back wages. Accordingly, this point is answered.

17. In the result, this industrial dispute is partly allowed and the petitioners No.1 and 2 are entitled for reinstatement with continuity of service from 8-4-2006 and 27-10-2009 respectively and other benefits. However, they are not entitled for back wages. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 8th day of December 2011.

**T. MOHANDASS,**  
II Additional District Judge,  
Presiding Officer, Labour Court,  
Puducherry.

*List of witnesses examined for the petitioner :*

PW.1 - 19-9-2011 - Janakiraman

PW.2 - 27-9-2011 - Rani

*List of witnesses examined for the respondent :*

RW.1 - 7-10-2011 - Ambika

*List of exhibits marked for the respondent :*

Ex.P1 — Copy of E.S.I. Identity card of P.W.1

Ex.P2 — PF annual statement of P.W.1 for the year 1999-2000.

Ex.P3 — PF annual statement of P.W.1 for the year 2000-2001.

Ex.P4 — Letter written by P.W.1, dated 21-12-2009 to the respondent.

Ex.P5 — Letter written by P.W.2, dated 21-12-2009 to the respondent.

Ex.P6 — Representation, dated 19-5-2010 given by the petitioner No.1.

Ex.P7 — Failure report issued by Labour Officer, dated 13-9-2010.

Ex.P8 — Representation, dated 17-6-2010 given by P.W.1.

*List of exhibits marked for the respondent :*

Ex.R1 — Letter of authorisation, dated nil.

**T. MOHANDASS,**  
II Additional District Judge,  
Presiding Officer, Labour Court,  
Puducherry.

**GOVERNMENT OF PUDUCHERRY**  
**CHIEF SECRETARIAT (ART AND CULTURE)**

*No. 19339/A&C/Sectt./E6/2011.*

*Puducherry, the 9th March 2012.*

**NOTIFICATION**

The Book Selection Committee for the Government Branch Libraries, Puducherry, Karaikal, Mahe and Yanam regions including Romain Rolland Library was reconstituted *vide* Notification No.19339/Edn/Sectt./E6/2007-08 of the Secretariat (Art and Culture), Chief Secretariat, Puducherry having expired, the Government have decided to extend the tenure of the Book Selection Committee for all the Government Public/Branch Libraries as well as the Romain Rolland Library, Puducherry as detailed in the Annexure.

2. The Member-Secretary of the Committee shall make necessary arrangements for convening the meeting as and when necessary.